No. 15966

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Appellant,

vs.

MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC.; THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER, INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO, and WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,

Respondents.

Supplemental
Transcript of Record

Petition to Enforce and Petitions to Review Order of the National Labor Relations Board

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—10-31-58

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MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC.; THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER, INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO, and WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-1374

MOUNTAIN PACIFIC, SEATTLE, AND TACOMA CHAPTERS OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,

and

Case No. 19-CB-424

INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 242, AFL-CIO,

and

Case No. 19-CB-445

WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,

and

CYRUS LEWIS, Charging Party.

CONSOLIDATED COMPLAINT

It having been charged by Cyrus Lewis, an individual, that the Respondents, Mountain Pacific

Chapter, Seattle Chapter and Tacoma Chapter of the Associated General Contractors of America, Inc., and International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act, 1947, 61 Stat. 136 (herein called the Act), the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, and Section 102.33, hereby issues this Consolidated Complaint and alleges as follows:

I.

(A) Mountain Pacific Chapter, Seattle Chapter and Tacoma Chapter of Associated General Contractors of America, Inc., referred to herein as the AGC Chapters, are corporate associations of employers that are engaged in construction work as contractors and have their principal places of business in the western part of the State of Washington.

(B) Mountain Pacific Chapter has its office in Seattle, Washington, and has members engaged primarily in highway and heavy construction.

(C) Seattle Chapter and Tacoma Chapter, respectively, have their offices in Seattle and Tacoma,

Washington, and each has members engaged primarily in building construction and in building specialty installations.

(D) The employer members of each of the AGC Chapters, by virtue of their membership therein, designate and authorize their respective chapters as their agents to negotiate collective bargaining agreements with labor organizations formed among employees in the building trades. These collective bargaining agreements prescribe the wages, hours and working conditions which are observed by the employer members of each chapter that is signatory to the agreement.

(E) Among the employers that comprise the membership of each AGC Chapter, (1) there are individual contractors who annually perform construction work valued in excess of $100,000 for business enterprises that annually produce and ship goods valued in excess of $100,000, and that annually provide services valued in excess of $100,000, which goods are delivered and services are performed at places outside the State of Washington. Additionally, (2) there are individual contractors who annually perform construction work at locations outside the State of Washington valued in excess of $100,000. Additionally, (3) there are individual contractors who annually perform services for the government of the United States, relating directly to the national defense, valued in excess of $100,000. The value of construction in each of categories (1) (2) and (3) above, performed an-

nually by the employers who collectively comprise each AGC Chapter, exceeds $10,000,000.

II.

(A) Each of the AGC Chapters, in negotiating for and agreeing to the collective bargaining agreements adopted by its employer members, is an agent of said employer members, and the AGC Chapter is thereby deemed an employer within the meaning of Section 2 (2) of the Act.

(B) The labor management relations and practices adopted for its employer members by each of the AGC Chapters affect commerce within the meaning of Section 2 (6) and (7) of the Act.

(C) Each of the AGC Chapters is an employer whose operations affect commerce within the meaning of Section 2 (6) and (7) of the Act.

* * *

/s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board, Region 19, 407 U. S. Courthouse, Seattle 4, Wash.

[Received in evidence as General Counsel's Exhibit No. 1-H.]

[Title of Cause.]

ANSWER OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER

This respondent answers the Consolidated Complaint herein as follows:

I.

Answering Paragraph I, this respondent admits that Associated General Contractors of America, Seattle Chapter, Inc., is a corporate association of employers engaged in construction work as contractors, and this respondent has its principal place of business in Seattle, Washington. Among the activities of this respondent is included the negotiation by its Labor Committee on behalf of its members of collective bargaining agreements prescribing wages, hours and working conditions, which agreements are observed by members of respondent. Some of the members of this respondent association annually perform construction work in excess of $100,000.00 upon enterprises affected with commerce, and other members of this respondent do not engage in commerce or work affected with commerce, or engage in such work in amounts of less than $100,000.00 per year. Except as specifically admitted herein, this respondent denies the allegations in Paragraph I or denies that it has sufficient knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

* * *

IV.

This respondent admits that it participated in the negotiation in the year 1955 of an agreement effective January 1, 1956, with the council, and the agreement contained the clause quoted in Paragraph VI of the Complaint. Except as specifically admitted herein, the allegations of Paragraphs V and VI are denied.

* * *

LYCETTE, DIAMOND & SYLVESTER,

By /s/ LYLE L. IVERSON,
Attorneys for AGC, Seattle Chapter.

[Received in evidence as General Exhibit No. 1-J.]

[Title of Cause.]

Before the National Labor Relations Board

ANSWER OF MOUNTAIN PACIFIC CHAPTER OF ASSOCIATED GENERAL CONTRACTORS, INC.

Comes now the Mountain Pacific Chapter of the Associated General Contractors, Inc., and for answer to the consolidated complaint, admits, denies and alleges as follows:

I.

Pertaining to allegations of Paragraph II, denies the same.

II.

Pertaining to the allegations of Paragraph IV this answering chapter has not sufficient knowledge or information relative thereto to form a belief and therefore denies the same.

III.

Pertaining to the allegations of Paragraph VI, admits that the 1956 Agreement referred to therein, provides as therein set forth, but denies each and every other allegation therein contained.

IV.

Pertaining to the allegations of Paragraph VII this chapter denies that it has maintained and continued in effect the 1956 Agreement and on the contrary alleges that its activities for and on behalf of its members was limited to negotiating the original Agreement and that after the same was executed it had no further interest in and took no steps to enforce the same.

V.

Pertaining to the allegations of Paragraphs VIII, IX and X, the Mountain Pacific Chapter does not have sufficient knowledge or information by which to base a belief and therefore denies each and every allegation contained in said paragraphs.

VI.

Pertaining to the allegations of Paragraph XI, denies the same.

VII.

Pertaining to the allegations of Paragraph XII, the Mountain Pacific Chapter does not have suf-

ficient knowledge or information on which to base a belief and therefore denies the same.

VIII.

Pertaining to the allegations of Paragraph XIII and XIV, the Mountain Pacific Chapter denies the same.

By Way of Further Answer and as an Affirmative Defense to the matters set forth in the consolidated complaint, the Mountain Pacific Chapter of the Associated General Contractors of America, Inc., alleges as follows, to wit:

I.

That its activities relating to said labor agreement was limited to negotiating the original agreement but that after the same was signed for and on behalf of its members, it has taken no steps either to facilitate or enforce the same and in compliance therewith it is the sole responsibility of its members to deal with the union.

II.

That by reason of the fact that members of the Mountain Pacific Chapter are primarily engaged in highway and heavy construction work, its members have no occasion to and do not use Local No. 242 AFL-CIO of the International Hodcarriers, Building and Common Laborers Union of America, and that neither said chapter nor its members have any dealings or relations whatsoever with said local.

Wherefore, the Mountain Pacific Chapter of the Associated General Contractors of America, Inc.,

prays that said consolidated complaint be dismissed as to it.

/s/ WILBUR H. LAUDAAS,
Manager, Mountain Pacific Chapter of the Associated General Contractors of America, Inc.

ELLIOTT, LEE, CARNEY
& THOMAS.

By /s/ WM. P. CARNEY,
Attorneys for Mountain Pacific Chapter of the Associated General Contractors of America, Inc.

[Received in evidence as General Counsel's Exhibit No. 1-N.]

Before The National Labor Relations Board

[Title of Cause.]

ANSWER OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO and WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO

Comes now the above-named respondents and for answer to the Consolidated Complaint, admits, denies and alleges as follows:

* * *

III.

Answering paragraph III, respondents admit the same.

* * *

V.

Answering paragraph V, respondents admit that the Associated General Contractors Chapters entered into collective bargaining agreements, but denies each and every other allegation contained therein.

* * *

/s/ ROY E. JACKSON,
Attorney for International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO.

[Received in evidence as General Counsel's Exhibit No. 1-O.]

Before The National Labor Relations Board

[Title of Cause.]

ANSWER OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER

This respondent answers the Consolidated Complaint herein as follows:

I.

Answering Paragraph I, this respondent admits that Associated General Contractors of America, Tacoma Chapter, Inc., is a corporate association of employers engaged in construction work as contractors, and this respondent has its principal place of business in Tacoma, Washington. Among the activities of this respondent is included the negotiation by its Labor Committee on behalf of its members of collective bargaining agreements prescribing wages, hours and working conditions, which agreements are observed by members of respondent. Some of the members of this respondent association annually perform construction work in excess of $100,000.00 upon enterprises affected with commerce, and other members of this respondent do not engage in commerce or work affected with commerce, or engaged in such work in amounts of less than $100,000.00 per year. Except as specifically admitted herein, this respondent denies the allegations in Paragraph I or denies that it has sufficient knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

* * *

IV.

This respondent admits that it participated in the negotiation in the year 1955 of an agreement effective January 1, 1956, with the council, and the agreement contained the clause quoted in Paragraph VI of the Complaint. Except as specifically admitted herein, the allegations of Paragraphs V and VI are denied.

V.

Answering Paragraph VII, this respondent admits that the agreement of January 1, 1956, is still in effect. Except as specifically admitted herein, the allegations of Paragraph VII are denied.

* * *

LYCETTE, DIAMOND & SYLVESTER,
Attorneys for AGC, Tacoma Chapter,

By /s/ LYLE L. IVERSEN.

[Received in evidence as General Counsel's Exhibit No. 1-P.]

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119 NLRB No. 126-A

United States of America

Before the National Labor Relations Board

Case No. 19-CA-1374

MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC., THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER

and

Case No. 19-CB-424

INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 242, AFL-CIO

and

Case No. 19-CB-445

WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO

and

CYRUS LEWIS, Charging Party.

OPINION

On December 14, 1957, the Board issued a Decision and Order in the above-entitled proceeding,[1] finding that the Respondents had engaged in certain unfair labor practices and ordering them to cease and desist therefrom and to take certain affirmative action. Member Murdock dissented from that Decision and Order. However, the Board expressly provided that an opinion in this matter would issue at a later date. That opinion follows:

1. In the absence of any exceptions, we adopt the Trial Examiner's conclusion that the Respondent Union's threats and promises of benefits and

[1] 119 NLRB No. 126.

inducements to charging party Lewis to get him to withdraw his charge in this case violated Section 8 (b) (1) (A) of the Act.

2. The Employers named respondents herein are three chapters of the Associated General Contractors of America (AGC) in the State of Washington, who jointly with Western Washington District Council and Local 242 of the Hod carriers executed a contract containing, in pertinent part, the following provisions:

(a) The recruitment of employees shall be the responsibility of the Union and it shall maintain offices or other designated facilities for the convenience of the Employers when in need of employees and for workmen when in search of employment.

(b) The Employers will call upon the Local Union in whose territory the work is to be accomplished to furnish qualified workmen in the classifications herein contained.

(c) Should a shortage of workmen exist and the Employer has placed orders for men with the Union, orally or written, and they cannot be supplied by the Union within forty-eight (48) hours * * * the Employer may procure workmen from other sources.

The Respondents do not, nor could they argue that this contract does not make employment conditional upon union approval, for a more complete and outright surrender of the normal management hiring prerogative to a union could hardly be phrased in contract language. The fact that the agreement

limits the union's exclusive control to a 48-hour period after a request for employees is immaterial, for if unqualified exclusive delegation of hiring to a union is unlawful, the vice is not cured by a reversion back to the employer of the hiring priviledge after the union is unable to enjoy the power conferred upon it.[2]

The basic question herein is whether the written contract, apart from all other evidence in the case, is itself unlawful because of the exclusive hiring hall it contains. We hold the hiring hall provisions of this contract to be unlawful. For purposes of our decision, therefore, it is unnecessary to determine whether there is sufficient evidence apart from the contract to support the allegation of discriminatory practices in hiring.[3]

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[2]In any event, in an industry like general contracting, characterized by short-term hirings of individual workmen who form a general pool of employees serving a large number of separate employers, control of the period immediately following the ever-rising need for new hirings is tantamount to perpetual control.

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[3]The Union admitted that in doing the hiring for the employers it always hires its members in preference to non-members, and that whenever a member is not immediately available, it attempts to locate one, and only failing in the search does it ever refer a non-union member to any assignment. If the contract were not unlawful on its face, we would deem the record as a whole ample to support a factual inference that the Employers in fact hired hod carriers and common laborers through this union hall and that the Respondents in fact hired such employees on behalf of the contractors in the closed-shop manner which the Union admitted.

Significantly, the contract is silent as to methods or criteria to be followed by the Union in performing its function as hiring agent. Under this contract and hiring hall, the Union is free to pick and choose on any basis it sees fit. Not only do the employers have no voice in the selection of applicants, but, for all the employers know or care, the Union's purpose in selecting some and rejecting others may be encouragement towards union membership, or towards adherence to union policies, matters which, were they the basis for direct employer selection, would constitute clear discriminations within the meaning of Section 8 (a) (3) of the Act.

From the standpoint of the working force generally—those who, for all practical purposes, can obtain jobs only through the grace of the union or its officials—it is difficult to conceive of anything that would encourage their subservience to union activity, whatever its form, more than this kind of hiring hall arrangement. Faced with this hiring hall contract, applicants for employment may not ask themselves what skills, experience or virtues are likely to win them jobs at the hands of AGC contracting companies. Instead their concern is, and must be: what, about themselves, will probably please the unions or their agents; how can they conduct themselves best to conform with such rules and policies as unions are likely to enforce; in short, how to ingratiate themselves with the union, regardless of what the employer's desires or needs might be.

Although Section 8 (a) (3), in words, outlaws discrimination which encourages union "membership," more is intended than a literal membership requirement.[4] The contract or hiring arrangement need not explicitly limit employment to union members to be unlawful. The statutory phrase "encourage membership in a labor organization" is not to be minutely restricted to enrollment on the union books; rather, it necessarily embraces also encouragement towards compliance with obligations or supposed obligations of union membership, and participation in union activities generally. It follows that specific or direct proof of such unlawful encouragement is not an indispensable element in every case. If the employer's conduct—whether caused by a union or not—is of a kind that "inherently encourages or discourages union membership,"[5] it is for this Board to draw the inference of illegality from such conduct alone. This follows the common law rule that a man is held to intend the foreseeable consequences of his action.

That encouragement to union membership may be inferred in situations where employers discriminate against employees at the request of a union is now authoritatively established. In the Radio Officers' case, two men were denied jobs solely because of a

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[4]A. Cestone Company, 118 NLRB No. 78; Acme Mattress Co., 91 NLRB 1010, enf'd. 192 F. 2d 242 (C.A.7).

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[5]Radio Officers' Union vs. N.L.R.B., 347 U.S. 17, 45.

union's action. They were union members and, despite absence of direct affirmative evidence that the discrimination encouraged membership in a union, the Supreme Court held that "it was eminently reasonable for the Board to infer encouragement of union membership * * *" It is with this basic principle in mind, that we judge this case and all exclusive hiring halls of this unrestricted and arbitrary type.[6]

Here the very grant of work at all depends solely upon union sponsorship, and it is reasonable to infer that the arrangement displays and enhances the union's power and control over the employment status. Here all that appears is unilateral union determination and subservient employer action with no above-board explanation as to the reason for it, and it is reasonable to infer that the union will be guided in its concession by an eye towards winning compliance with a membership obligation or union fealty in some other respect. The employers here have surrendered all hiring authority to the Union and have given advance notice via the established hiring hall to the world at large that the Union is arbitrary master and is contractually guaranteed to remain so. From the final authority over hiring vested in the respondent union by the three AGC

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[6]See also The Lummus Company, 101 NLRB 1628, where the Board said, "* * * the Respondent's requirement that job applicants obtain approval from the Carpenters as a condition of employment is itself a discriminatory hiring condition within the meaning of Section 8 (a) (3) of the Act."

chapters, the inference of encouragement of union membership is inescapable.[7]

However, we do not read the statute as necessarily requiring elimination of all hiring halls and their attendant benefits to employees and employers alike.[8] The vice in the contract here considered and its hiring hall lies in the fact of unfettered union control over all hiring, and our decision is not to be taken as outlawing all hiring halls. We agree with Senator

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[7]It is not necessary, as the Respondents apparently contend, that any discrimination provided for in the contract must be shown in fact to have occurred before the agreement itself be declared unlawful. The very existence of the contract and its proscribed pro-union provisions exert a prohibited coercive effect upon the employees or, as here, applicants for employment. The Board, with Court approval, has consistently held that maintenance of an unlawful contract, apart from its enforcement, violates the Act. Red Star Express Lines vs. N.L.R.B., 196 F. 2d 78, at 81 (C.A. 2); N.L.R.B. vs. Gaynor News Co., 197 F. 2d 710 (C.A. 2), affirmed 347 U.S. 17.

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[8]See Senate Report No. 1827, 81st Congress, Second Session, Committee on Labor and Public Welfare. It was to eliminate wasteful, time-consuming and repetitive scouting for jobs by individual workmen and haphazard uneconomical searches by employers that the union hiring hall as an institution came into being. It has operated as a crossroads where the pool of employees converges in search of employment and the various employers' needs meet that confluence of job applicants. In some industries such basic hiring with the assistance of the union has served to excuse conduct which runs counter to the express proscriptions of the statute which we must enforce.

Taft, the principal proponent of the 1947 Taft-Hartley amendments, who stated that Section 8 (b) (2) was not intended to put an end to all hiring halls, but only those which amount to virtually closed shops.[9]

The basis for a union's referral of one individual and refusal to refer another may be any selective standard or criterion which an employer could lawfully utilize in selecting from among job seekers.

We believe, however, that the inherent and unlawful encouragement of union membership that stems from unfettered union control over the hiring process would be negated, and we would find an agreement to be non-discriminatory on its face, only if the agreement explicitly provided that:

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[9]Senate Report No. 1827, supra. Mr. Taft said:

The majority report proceeds upon the erroneous assumption that unless the closed shop prohibition of the Taft Hartley Act is removed for maritime unions, such unions cannot continue to have hiring halls in that industry but must go back to a complete open shop, or even recruitment by "crimps" and "shape-up." The National Labor Relations Board and the courts did not find hiring halls as such illegal, but merely certain practices under them. The board and the Court found that the manner in which the hiring halls operated created in effect a closed shop in violation of the law. Neither the law nor these decisions forbid hiring halls, even hiring halls operated by the unions, as long as they are not so operated as to create a closed shop with all of the abuses possible under such an arrangement, including discrimination against employees, prospective employees, members of union minority groups, and operation of a closed union.

(1) Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

(2) The employer retains the right to reject any job applicant referred by the union.

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.

If, in the operation of a hiring hall that comports with these requirements and is therefore lawful on its face discriminatory acts occur, they are, of course violations of the statute, both by the union which refers or refuses to refer on a discriminatory basis, and by the employer who has delegated the hiring authority to the union. The employer is in pari delicto, and is as responsible as the union for any deviation from the non-discriminatory hiring hall procedure. Any employee or would-be employee who believes himself a victim of discriminatory practices by a union party to an otherwise lawful hiring hall will, of course, have the right to file a charge against both the union and the employer or employers party to the contract in question.

We recognize that a procedure requiring application for employment through a union tends to encourage union membership—in fact it gives to unions a ready forum for organizational activities. However, appraisal of the statute as a whole and the large body of decisional law based upon it, shows that there are many literal forms of encouragement to union membership that are not prohibited. The better representation a union affords, the more successful it is in wresting economic advantage from the employer for the employees, the more it will attract members to it; i.e., "encourage union membership." Clearly such encouragement alone does not always violate Section 8 (a) (3); a line must be drawn between lawful and unlawful encouragement. In some instances, Congress itself draw that line. For example, a discharge for lack of membership in a union is, standing alone, a violation of the Act, and the union causing the discharge violates Section 8 (b) (2). But this same encouragement is not violate of the Act when pursuant to a contract with proper provisions. The board has also drawn a line not expressly required by statute. Discharge of a striker is normally unlawful discouragement of union activity. But when the contracting parties have agreed to a no-strike clause, the striker may lawfully be discharged despite the inevitable discouragement from union adherence.[10] We would draw a similar line between the type of unfettered arbitrary hiring hall present here and one including

[10]Shell Oil Company, Inc., 77 NLRB 1306.

the safeguards set forth above. The first case, revealing an unexplained and autocratic union fiat, fully warrants an inference of unlawful encouragement despite the absence of literal membership requirement; the latter situation, with its assurances to would-be employees of selection based on objective criteria and specifically rejecting union membership or adherence as a basis for selection, effectively rebuts any inference of unlawful union encouragement, and therefore does not support an inference of illegality.

For the reasons expressed above we find, contrary to the Trial Examiner, that the hiring provisions of the contract between the Respondent Employers and the Respondent Unions, which contain none of the safeguards that could serve to rebut the inference that they encourage membership in the Respondent Unions, are unlawful. Accordingly, we conclude that the Respondent Employers have violated Section 8 (a) (3) and (1) of the Act, and the Respondent Unions have violated Section 8 (b) (2) and (1) (A) of the Act, by executing and maintaining in effect the hiring provisions of their contract.[11]

3. We also find, contrary to the Trial Examiner, that the implementation of the unlawful contract

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[11]As only the charge against Respondent Local 242 was filed within six months of the execution of the contract in question, our finding against the other Respondents is limited to the maintenance of the hiring provisions of the contract rather than their execution. Our remedial action herein is in no way affected by this difference.

in the rejection of Lewis' continuous applications for employment was an unfair labor practice by both the Union and Employer Respondents. He was a clear victim of the unlawful hiring system being carried on.

As the Intermediate Report sets forth, Lewis was dropped from membership in the Respondent Local 242 for non-payment of dues about 1950. Starting about March 15, 1956, he came to the hiring hall and asked for work, but was told none was available. During the next 7 or 8 weeks he returned to the hiring hall several times each week seeking work, but was repeatedly told there was no work, despite the fact that other hod carriers were being dispatched to jobs on many occasions during the same period. He attempted to persuade the Union to reinstate him during this period, with the hope that he might avail himself of the hiring hall, but was told by Allman, Local 242's corresponding secretary and dispatcher, and Buchanan, its financial secretary and business representative, that the Union "wouldn't take any new members." On one occasion, on May 9, 1956, Lewis obtained a job directly from a contractor, not a member of any AGC Chapter. Business representative Buchanan came to the project and told the contractor that he would place a picket line at the project unless he hired only union members.

Five days later, on May 14, when Lewis appeared once again at the office of the Union and asked Allman to dispatch him, Allman told Lewis that the Union was not going to give him "a damned thing,"

and that he should "get out and stay out." On May 17, Lewis was the first hod carrier at the hiring hall, but was not sent on a job although a number of hod carriers reported to the hiring hall and were dispatched during the day. Thereafter, Lewis was actually dispatched to jobs on a number of occasions, with a clear indication from the Union's representatives that they hoped this would induce him to withdraw the charges he had filed against the Union.

As an old-time member of the Union, and aware of the established hiring hall arrangement, Lewis, of course, went to the Union to apply for work. Had he gone directly to one of the Respondent Employers he would unquestionably have been rejected summarily and referred to the union hall for clearance, for that is precisely what the contract obligated each employer to do. It matters not, therefore, which of the two parties to the illegal contract he first approached. His unlawful exclusion from employment was a joint act by both Respondents.[12] It is equally immaterial that there is no evidence now before us that on the particular days when he was rejected there were job openings with the Respondent employers, or current requests for referrals in the hands of the union officials pursuant to the contract. The Board and the Courts have held that

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[12]As indicated above, even were the particular hiring agreement here involved a lawful one, the Respondent Employers, having delegated hiring authority to the Union, would be in pari delicto and equally responsible with the Union for any particularized discrimination, as happened to Lewis here, that the Union perpetrated.

neither unavailability of work or lack of application for a particular job serves as a defense to a discriminatory hiring policy when it is clear that no job would be proferred in any event.[13] At best, questions respecting what work was in fact available and unlawfully denied Lewis, are matters for investigagation in the compliance stage of this proceeding in determining the amount of back pay due him pursuant to our remedial order.

We find, accordingly, that the Respondent Unions violated Sections 8 (b) (2) and (1) (A) of the Act, and the Respondent Employers violated Sections 8 (a) (3) and (1) of the Act, with respect to Lewis.

Dated, Washington, D. C.

[Seal] NATIONAL LABOR
RELATIONS BOARD,
.....,
BOYD LEEDOM,
Chairman;
.....,
PHILIP RAY RODGERS,
.....,
STEPHEN S. BEAN,
.....,
JOSEPH ALTON JENKINS,
Members.

Issued March 27, 1958.

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[13]Daniel Hamm Drayage Company, Inc., 84 NLRB 458; enfd. 185 F. 2d 1020 (C.A.5); Seabright Construction Company, 108 NLRB 8; J. R. Cantrall, et al., 96 NLRB 786, enfd. 201 F 2d 853 (C.A.9), cert. denied, 345 U.S. 996; N.L.R.B. vs. Swinerton and Walberg, 202 F. 2d 511 (C.A. 9).

Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-1374

In the Matter of:

MOUNTAIN PACIFIC CHAPTER; SEATTLE CHAPTER; and TACOMA CHAPTER OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,

and

CYRUS LEWIS.

Case No. 19-CB-424

INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION, LOCAL No. 242, AFL-CIO,

and

CYRUS LEWIS.

Case No. 19-CB-445

WESTERN WASHINGTON DISTRICT COUNCIL, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS OF AMERICA,

and

CYRUS LEWIS.

TRANSCRIPT OF PROCEEDINGS

Thursday, October 25, 1956

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: Herman Marx, Esq.,
Trial Examiner.

Appearances:

MELTON BOYD, ESQ.,
Appearing on Behalf of General Counsel.

LYLE L. IVERSON, ESQ., of
LYCETTE, DIAMOND AND SYLVESTER,
Appearing on Behalf of the Seattle and Tacoma Chapters of the Associated Contractors of America.

ARVIN P. CARNEY, ESQ., of
ELLIOTT, LEE & CARNEY,
Appearing on Behalf of Mountain Pacific Chapter of the Associated General Contractors of America.

ROY E. JACKSON,
Appearing on Behalf of the Building and Common Laborers Union of America, Local No. 242, AFL-CIO. [2*]

* * *

The Court: Let me ask you, gentlemen, I note that each individual respondent, that is, at least each A.G.C. respondent, admits certain commercial facts applicable to itself or to its members. An admission by one party, under a ruling by the Ninth Circuit Court of Appeals in the matter [7] of the Haddock case, is not an admission by any other

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

parties. I don't know why that case had to reach the Circuit Court to have that question decided.

Is there any possibility, in order that we may save some time, and solely for that purpose, is there any possibility that you can reach some stipulation about commerce, which is to be a stipulation embodying facts which are to be taken as commerce facts in this proceeding?

Mr. Iverson: We have admitted in our answers, on behalf of the Seattle and Tacoma chapters, that they have some members who have more than a hundred thousand dollars worth of business a year and some that don't. I don't know as there is anything more to prove on that. I think that is a fact we have admitted in the answer and I don't know whether there is any other issue on it. [8]

* * *

Trial Examiner: I suggest a far more, it seems to me a far more, specific way of disposing of this simply would be that the union, if it so desires, admit so much of the complaint with respect to Paragraphs I and II as the three chapters admit in their respective answers.

Mr. Jackson: I assume we will go along with that, yes. I think the union can go along with that.

Trial Examiner: That puts you in no better nor in any worse position than they.

Now, the union, then, stands on an even footing as far as admissions are concerned concerning paragraphs I and II, as the chapters, and I think we have saved some time, gentlemen.

* * *

COLTON HARPER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [11]

Direct Examination

* * *

By Mr. Boyd:

Q. With that basis, or that information as a basis, for your answers, are your employers of the A.G.C., Seattle Chapter, performing construction work for firms in excess of a hundred thousand dollars annually, which firms themselves are producing goods that are shipped in interstate commerce, valued in excess of a hundred thousand dollars? A. Yes. [12]

Q. I think you have prepared a gross figure.

A. Yes, I have.

Q. With respect to the total amount of such construction? A. Yes, I have.

Q. What is that gross figure?

A. I would like to add that these totals are records of awards, they are not complete, and we don't have, and we don't have them on negotiated jobs as such, but these are on competitive bidding jobs.

For firms who annually ship goods in excess of $100,000 in interstate commerce, for the year of 1955, our members, $26,586,361.

Q. Thank you, sir. Do you have a breakdown of the dollar volume of work that was done under contract directly with the United States Govern-

(Testimony of Colton Harper.)

ment which related to defense installations performed by your members?

A. That was $23,431,353.

Q. Do you have a further breakdown of the dollar volume of work done by your members in construction work outside the state of Washington?

A. $20,773,717. **[13]**

* * *

Q. (By Mr. Boyd): Mr. Harper, does your association normally or regularly or with any regularity negotiate collective bargaining agreements with labor organizations in this area?

A. Yes. [14]

* * *

CYRUS LEWIS

a [203] witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [204]

Direct Examination

* * *

Q. Hod Carriers' Union?

A. Well, they carrier Hod Carriers, the Hod Carriers' Union?

Q. Did you belong to one here in Seattle?

A. Yes.

Q. Which one? A. Two-four-two.

Q. When did you join?

A. I joined in 1949.

Q. Are you presently a member? A. No.

(Testimony of Cyrus Lewis.)

Q. When did you drop out?

A. I dropped out about '50.

Q. In 1950? A. Yes.

Q. Since 1950 have you made any efforts to rejoin? A. Yes.

Q. Let's come to 1956. Did you in 1956 seek work as a common laborer?

A. I seeked work as hod carrier.

Q. When did you begin looking for work as a hod carrier in 1956?

A. About the 15th of March.

Q. About the 15th of March? [205]

A. Yes.

Q. Where did you go when you first looked for work? A. I went to the union hall.

Q. Do you recall with whom you talked down there when you went down there?

A. Yes, I talked with Buchanan and Leo.

Q. What did they tell you?

A. They kept telling me every time I would go there that there wasn't anything.

Q. How frequently did you go in the month of March?

A. I went from two to three times a week [206]

* * *

Q. (By Mr. Boyd): I hand you here, Mr. Lewis, to refresh your recollection, these paycheck stubs—here, you use my glasses, I have to use them to read it. I direct your attention here to the date of April 2, 1956. Was that the last of the checks

(Testimony of Cyrus Lewis.)

you got from the Metropolitan Builders, was that the last of the work you got with them?

A. Yes.

Q. How long did you work for them?

A. I worked for them nine days.

Q. After you got this money for working for Metropolitan Builders, what did you do?

A. I finished, the last day they paid me off I went down to the union hall.

Q. On that same day?

A. No, the following day.

Q. That would be on April third, then?

A. That is right. And I went down and offered to reinstate or pay some dues or whatever they would let me do to show that I didn't want to be a slacker. I wanted to be a union member, and they wouldn't accept my money at all from me.

Q. Who did you talk with at that time? [209]

A. I talked to Leo and Buchanan both.

Q. What did Buchanan say to you and what did Leo say to you, on this particular occasion right after you worked on this Metropolitan Builders job?

A. Well, I talked to Buchanan and Buchanan said, "Talk to Leo about it," and Leo said that he wouldn't receive any money, wouldn't take any money from me, that there weren't any jobs and he wouldn't take any new members.

* * *

(Testimony of Cyrus Lewis.)

Q. Fixing in your mind that May 11th fell on Friday, can you tell us what happened on May 9th?

A. Well, May 9th I went to the union hall in the morning and I walked up to the window and I asked for work. They told me there wasn't anything. I stayed at the union hall until about 10:30 and then I left. While walking on my way home I ran into this job that Mr. Nielsen had, moving the Teamsters' Building, [210] and Mr. Nielsen put me to work. Iworked five hours up there. About 4:30 that evening Buchanan came on the job and had me pulled off.

Q. Well now, will you tell us what Buchanan said to you, what you said to Buchanan and what you heard Buchanan say to others? And can you fix the time specifically?

A. Buchanan came on the job and walked up to me and asked me what I was doing there.

Trial Examiner: What time was that?

The Witness: I would say that would be about 4:15.

Trial Examiner: All right, now what if anything did you say or what did he say? Tell us.

The Witness: Well, he asked me what was I doing working there and I told him, I said, "I am working here because Mr. Nielsen gave me a job." And he said, "Who is Mr. Nielsen?" And about that time Mr. Nielsen walked up and I pointed out Mr. Nielsen to him. Then he asked Mr. Nielsen why he had nonunion men working there, and so in the meantime he told Mr. Nielsen if he kept hiring non-

(Testimony of Cyrus Lewis.)

union men he was going to put a picket around the job, and at that time he walked away from me. That is all I heard. [211]

* * *

Q. The record in evidence shows that that charge was received by the union on Monday, May 14th. Were you at the union hall on Monday, May 14th?

A. Yes.

Q. What time did you go there?

A. I went to the union hall about 7 o'clock that morning.

Q. Will you tell us what took place on Monday, May 14th?

A. I went down to the union hall on Monday, May 14th, and I walked up to the window and asked for some work.

Q. Who did you talk with?

A. I spoke to Leo. [212]

Q. All right, then what happened?

A. Leo says to me, "We have heard you filed a charge against the union and we are not going to give you a damned thing."

Q. Was there anything further said?

A. And he said, "We are not going to give you a damned thing so get out and stay out." [213]

* * *

Q. Tell us what took place on the 17th, all the way through.

A. On the 17th I went down to the hall that morning.

Q. What time did you get there?

(Testimony of Cyrus Lewis.)

A. I got there that morning about a quarter to 7.

Q. Were there other people there when you got there? [218] A. No, I was the first man in.

Q. All right, now, go ahead.

A. I was the first man in the hall. About 7 o'clock there was about four or five other hodcarriers came in. There was quite a few jobs that morning and they sent all the guys out but me.

Trial Examiner: Who sent them out?

The Witness: The dispatcher, Leo. Leo sent all the guys out but me.

Q. (By Mr. Boyd): Had you gone up to the window when he came there?

A. Yes, I went up to the window when he first came in.

Q. All right, go ahead.

A. So he said there wasn't anything right then, but he sent out five guys and left me sitting there. About 10:30, about 10 o'clock that morning there was several calls came in and he came out looking for a hodcarrier, and I am still sittin' there, and this hodcarrier, this job was for some brick job at Todd's, and I saw him. How I could tell that he wanted a hodcarrier, I walks up to him and I said, "I will take that job," and he told me that the job was out somewhere at some other place, I don't know what it was, but he told me something, that it was someplace else. He told me it wasn't a hodcarrier's job. Sometime later there was a hodcarrier came in by the name of Mr. Johnson. He gave Mr.

(Testimony of Cyrus Lewis.)

Johnson this job that [219] I asked for that I knew he had.

* * *

Q. (By Mr. Boyd): This becomes hearsay, Cyrus, so instead of going over this conversation with Johnson let's go back to after the job was given to Johnson that morning, on the morning of May 17. After you had been sitting around there and the job was given to Johnson, what did you do?

A. I stayed there until about 10, 10:15 or 10:30. There was a job came in, or Leo gave me this job——

Q. (Interrupting): Before he gave you the job, I want to find out, did anything happen between the time that Johnson was sent out on a job and you were given a job?

A. The only thing I can remember at the time, Johnson went out just before I did, and the only thing I can remember before he gave me this job he replied to me, he said, "I am going to give you a job; I am going to give you this job; and I want you to go up to the courthouse on your way up; I want you to go up to the courthouse this morning and withdraw the suit against the union."

Trial Examiner: Leo said this?

The Witness: Yes.

Trial Examiner: All right, go ahead. [220]

A. And I told him I would, I would go and see what I could do about it.

Q. (By Mr. Boyd): He gave you a dispatch then to a job? A. Yes

(Testimony of Cyrus Lewis.)

Q. Where was that job?

A. This job was out in the Sandpoint district.

Q. Do you remember the name of the employer?

A. The name of the employer was Landrus, I believe.

Q. Before you went out on the job did you make any report of what you were doing?

A. Before I went to the job, on my way downtown, on my way to the job downtown, I stopped in a telephone booth and I called Mr. Dan Boyd.

Q. And told him you were going out on a job?

A. I told him I was going out on a job.

Q. Had you talked with him earlier that day?

A. Yes.

Q. Where? A. On the telephone——

Q. (Interrupting): From where?

A. From the union hall.

Q. That is the thing I want you to tell us about. When was [221] this earlier telephone call?

A. The telephone call was earlier that morning when I was the first man there. They sent out all the men and left me sitting there, and I made a report to Mr. Dan Boyd about how they was treating me about giving me work.

* * *

Mr. Boyd: I would make an offer, that this witness, if permitted to testify, would testify that the field examiner told him he would call the union hall. And I would point out to the Trial Examiner that

(Testimony of Cyrus Lewis.)

yesterday Mr. Buchanan testified that he got a call on that morning.

Trial Examiner: Mr. Boyd?

Mr. Boyd: From Mr. Dan Boyd. [222]

* * *

Q. Tell us what took place on the 23rd.

A. On the 23rd I went to the Union Hall that morning about 7:30. I walks up to the window and asks Leo for a job. He said to me, he said, "Did you go down and withdraw the charges against the union?" I told him no. He turned to Buchanan and said, "Lewis didn't do what we told him to do," he says, and so Buchanan says, "Well, I am not going to be here much longer, the hell with him." And Leo says, "You didn't go down and withdraw the charge like I told you to so you can get out and stay out as far as I am concerned." [224]

* * *

Q. Did you get any work from them through the union during the remaining days in the month of May? A. No.

Q. Did you go back to the Union Hall? [226]

A. I certainly did.

Q. How frequently?

A. I went two, three times, sometimes four times, a week at that time. [227]

* * *

Q. I will hand you here pay slips which indicate that you worked for Lloyd E. Beck for a

period beginning September 19 through September 28, 1956. Is that about the time that you were working there, according to your own [242] recollection? A. Yes.

Q. You say you talked with Leo when you were working on that job? A. Yes.

Q. Will you tell us now in detail what happened in that conversation?

A. Well, he came on the job and called me off in person again and asked me had I tried to withdraw this case, and I told him, I said, "Well, I have called them up and talked to them," which I hadn't, and he says—at the time I wanted to keep working. I didn't know whether he was going to pull me off the job or what. I stalled him off. And at the time he says, "Well, to prove to me that you have tried to withdraw the case or want to withdraw the case," he says, "will you sign a paper stating that you want to withdraw the case or will withdraw the case?" and I told him, I says, "I will tell you, when I talked to them they told me it was out of my hands," and "I would rather you would call up and talk to some officials up there, my lawyer or somebody, some official up there. There is nothing else I can do." So the conversation led on from one word to the other, but I guess then part of it was he was trying to get me to sign a statement that I would

Mr. Jackson: Well——

withdraw the case at that time.

Mr. Boyd (Interrupting): He is only reiterating what he [243] said.

Trial Examiner: I am going to strike this wit-

ness' supposition as to what Leo was trying to get him to do.

Q. (By Mr. Boyd): Did Leo make any statement to you with reference to other cases at that time?

Mr. Jackson: Just a minute. Other cases, what do you have reference to?

Mr. Boyd: The only way I can get it is from the witness. It is germane to the context in which this was being said.

Trial Examiner: We will find out. If there is an objection or a motion to strike, why, I will pass on it.

Go ahead, sir.

Q. (By Mr. Boyd): What was it he said?

A. He says to me, he says, "Whether you know it or not," he says, "there has been other cases filed against the union," he says, "there has been other cases filed against the union," and he says, "we have given the boys work and they have withdrawn the cases," and he said, "I came up to talk to you to see if you would withdraw the case, if you want to keep on working." [244]

* * *

Trial Examiner: But for the purposes of discussion here, [338] assuming that the three chapters are employers, wouldn't you have to show that their members or any of their members, or that some members of each of the chapters had, in fact, discriminated against Mr. Lewis?

Mr. Boyd: That would be one way. The other way is to show that their agent, to wit, the Com-

mon Laborers Local, which is their hiring agent, has discriminated. They contractually agree that the union will be their hiring agent.

* * *

Trial Examiner: Will you agree you haven't proved it in this proceeding?

Mr. Boyd: I agree that we have taken up no specific employer's case wherein we have shown that the union kept Lewis [339] from taking an available job, because we don't know of those things.

* * *

Trial Examiner: You haven't proved, have you, that a [340] single chapter member at any time in question here requested a dispatch of any hodcarriers to any job, have you?

Mr. Boyd: I believe that is in this record here, that the A.G.C. Chapter members were giving effect to this contract.

Trial Examiner: Well, I know, but the point is this, this is all in generalized testimony.

Mr. Boyd: Yes. [341]

* * *

Mr. Boyd: We can't infer which job it was, I certainly agree with that, because we just don't know which job it was.

* * *

Received November 7, 1956. [341]

* * *

[Endorsed]: No. 15966. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Appellant, vs. Mountain Pacific Chapter of the Associated General Contractors, Inc.; The Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter; International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO., and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO., Respondent. Supplemental Transcript of Record. Petition to Enforce and Petitions to Review Order of the National Labor Relations Board.

Filed June 2, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15966

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC.; THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER, INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 242, AFL-CIO,

and

WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,

Respondents.

ANSWER AND PETITION FOR REVIEW OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER

To the Honorable Judges of the Ninth Circuit Court of Appeals:

The Associated General Contractors of America, Tacoma Chapter, hereby answers the petition for enforcement heretofore filed by the National Labor Relations Board, and petitions for a review by this court of the proceedings of the National Labor Relations Board and the order of said board in this matter.

Answering the allegations of the petition for enforcement, this respondent alleges:

1. This respondent, Associated General Contractors of America, Tacoma Chapter, is a Washington corporation, functioning as a business association to advance the common good of its members, and is not otherwise engaged in business. Its activities are carried on within the Ninth Circuit. Except as admitted herein, this respondent denies the allegations of paragraph 1 or denies that it has knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

2. Answering paragraph 2, this respondent admits the entry of an order by the National Labor Relations Board under date of December 14, 1957, and admits that the same was served upon it, but denies that said order was legal or valid.

3. This respondent has no knowledge as to the allegations of paragraph 3.

Petition for Review

This respondent petitions this court to review the order of the National Labor Relations Board in the

consolidated cases, before designated cases Nos. 19-CA-1374; 19-CB-424, and 19-CB-445, insofar as said order was directed against this respondent.

1. This petition for review is made pursuant to the provisions of subparagraph (f) of Section 160, Title 29, United States Code.

2. This respondent alleges that the transcript which will be filed by the National Labor Relations Board in connection with its petition for enforcement will be the same transcript as would be involved in this petition for review.

3. The order of the National Labor Relations Board is invalid and erroneous for the following reasons:

This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not, and at no time material hereto was, an employer within the meaning of the National Labor Relations Act, nor was it engaged in commerce.

The procedure was not commenced within the time limited by law, particularly section 10(b) of the National Labor Relations Act.

It was not established that this respondent engaged in any unfair labor practice.

The findings of the National Labor Relations Board do not support the order which was entered against this respondent.

The order of the National Labor Relations Board is contrary to law.

Wherefore, this respondent prays that the order of the National Labor Relations Board be reviewed and set aside as to it, and that the petition for enforcement be denied.

LYCETTE, DIAMOND & SYLVESTER,

Attorneys for Associated General Contractors of America, Tacoma Chapter;

By /s/ LYLE L. IVERSON.

[Endorsed]: Filed July 8, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON BY ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER

Respondents Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter, will rely upon the following points in connection with their petition for review:

1. Neither of these respondents is subject to the jurisdiction of the National Labor Relations Board

and are not and at no time material hereto employers within the meaning of the National Labor Relations Act nor was either of these respondents engaged in commerce.

2. The procedure was not commenced within the time limited by law, particularly Section 10(b) of the National Labor Relations Act.

3. It was not established that either of these respondents was engaged in any unfair labor practice.

4. The findings of the National Labor Relations Board do not support the order which was entered against these respondents.

5. The order of the National Labor Relations Board is contrary to law.

LYCETTE, DIAMOND &
SYLVESTER,

Attorneys for Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter.

By .....

[Endorsed]: Filed July 17, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON BY MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC.

To: The Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

This respondent will rely upon the following points in connection with its petition for review:

1. This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not, and at no time material hereto was, an employer within the meaning of the National Labor Relations Act, nor was it engaged in commerce.

2. The procedure was not commenced within the time limited by law, particularly Section 10(b) of the National Labor Relations Act.

3. It was not established that this respondent engaged in any unfair labor practice. That it was established that neither this respondent nor its members have any business transactions with the Building and Common Laborers Union of America, Local No. 242, AFL-CIO, or its members.

4. The findings of the National Labor Relations Board do not support the Order which was entered against this respondent.

5. The order of the National Labor Relations Board is contrary to law.

ELLIOTT, LEE, CARNEY & THOMAS,

By /s/ ELVIN P. CARNEY,

Attorneys for Respondent-Petitioner, Mountain Pacific Chapter of the Associated General Contractors, Inc.

[Endorsed]: Filed October 9, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON BY INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 242, AFL-CIO AND WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO

Respondents International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, will rely upon the following points in connection with their petition for review:

1. That the proceeding instituted by and before the National Labor Relations Board was not commenced within the time limited by law, particularly Section 10(b) of the National Labor Relations Act.

2. It was not established that either of these respondents was engaged in any unfair labor practice.

3. The findings of the National Labor Relations Board do not support the order which was entered against these respondents.

4. The order of the National Labor Relations Board is contrary to law.

/s/ L. PRESLEY GILL,
Attorney for International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO.

[Endorsed]: Filed October 10, 1958.